IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Bhagwat Singh Vs. Shri Rajendra Singh & Anr.

S.B.CR.MISC. PETITION NO.488/2004

DATE OF ORDER :: November 24, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Anand Purohit, for the petitioner.
Mr.Ashok Upadhyaya, P.P.
Mr.D.K.Sharma, for non-petitioner No.1.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 26.5.2004 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Udaipur (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 29.10.2003 passed by the Additional Chief Judicial Magistrate No.2, Udaipur (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the petitioner, Public

Prosecutor and the counsel appearing for non-petitioner No.1. Carefully gone through the orders passed by both the courts below.

It appears that a cheque alleged to have been issued by the petitioner in favour of non-petitioner No.1, Rajendra Singh on being presented to the Bank, was dishonoured on account of insufficient fund and returned unpaid. After serving of notice demanding the cheque amount within the statutory period of 15 days from the date of receipt of the notice, the petitioner having been failed to pay the cheque amount, a complaint was filed by the non-petitioner No.1. against the petitioner under section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter). The complaint filed by non-petitioner No.1 has been tried by the trial court and at the stage of final argument, a case has been instituted by the petitioner against the non-petitioner No.1 for the offence under section 381 I.P.C. At that stage, an application was moved by the petitioner before the trial court to try the case instituted by him with the case instituted by the complainant-non-petitioner No.1 under section 138 of the Act. That application came to be dismissed by the trial court as well as by the revisional court on revision. Both the courts below concurrently found that there is no ground to try both the cases together and in my view rightly so, as both the cases are not

arising out of one and same occurrence and are based on different cause of actions. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any court warranting interference in the inherent jurisdiction of this Court.

The petition is, therefore, dismissed. Ad interim stay order dt. 6.7.2004 is vacated. The stay petition also stands dismissed.

[H.R.PANWAR],J.

m.asif/-